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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962.

**No. 404**

NATIONAL LABOR RELATIONS BOARD,
*Petitioner,*

*vs.*

GENERAL MOTORS CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

## BRIEF FOR RAYMOND E. LEWIS, BERNICE COX, PAUL B. ATWOOD, R. E. HARRINGTON, CLETUS L. CHITWOOD, EUGENE CATES, LEWIS D. FIELDS, AND JOHN A. MOLDTHAN AS AMICI CURIAE.

OWEN J. NEIGHBOURS,
1350 Consolidated Building,
Indianapolis 4, Indiana,
*Attorney for Raymond E. Lewis, Bernice Cox, Paul B. Atwood, R. E. Harrington, Cletus L. Chitwood, Eugene Cates, Lewis D. Fields, and John A. Moldthan.*

CHARLES W. CULP,
1350 Consolidated Building,
Indianapolis 4, Indiana,
*Of Counsel.*

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### INTEREST OF AMICI CURIAE.

This Brief is submitted in behalf of Raymond E. Lewis, Bernice Cox, Paul B. Atwood, R. E. Harrington, Cletus L. Chitwood, Eugene Cates, Lewis D. Fields, and John A. Moldthan, individually and as representatives of other employees of General Motors Corporation, hereinafter called "Company", who are similarly situated.[1] Each of such persons is an employee of the Company occupying

1. Consents to the filing of this Brief, executed by the Solicitor General and counsel of record for General Motors Corporation, have been filed with the Clerk of this Court.

a position within the collective bargaining unit which would be subject to the agency shop arrangement proposed by the International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America (AFL-CIO), hereinafter called "Union", in its letter to the Company of October 20, 1959 (R., pp. 54-55, 74, 82, 99-100). Each of such persons is not now a member of the Union; each has no desire to become a member of the Union; and each believes that the forced payment of sums under the proposed agency shop provision would be an infringement of his individual liberties. Further, several hundred other employees of the Company within such collective bargaining unit are not members of the Union, have no desire to become members of the Union, and are opposed to the infringement of liberties involved in the involuntary payment of agency shop fees.

Under the provisions of Sections 7, 8(a) (1), and 8(a) (3) of the Labor Management Relations Act, as amended (61 Stat. 136, 73 Stat. 519), each of such persons is entitled to be free from interference, restraint, or coercion by the Company or the Union or any other labor organization with regard to his right to refrain from assisting the Union or any labor organization. Each of such persons is entitled to be free from any discrimination with regard to hire and tenure of employment which in any way would require him or other employees to assist the Union in any manner whatsoever.

The agency shop agreement proposed by the Union would require the *amici curiae* and all other employees of the Company similarly situated to assist the Union upon penalty of being discharged, in violation of their rights under Sections 7, 8(a) (1) and 8(a) (3) of the Labor Management Relations Act, as amended. Therefore, each of such persons has a direct interest in this litigation.

## SUMMARY OF ARGUMENT.

Section 7 of the Taft-Hartley Act grants employees the right to assist or refrain from assisting labor organizations. The only exception to this right is contained in the first proviso of Section 8(a) (3), which provides that certain arrangements requiring membership may be agreed to by unions and employers in derogation of the rights granted to employees by Section 7. For purposes of this proceeding, the scope of the proviso is denoted by the term "membership" and does not include union security arrangements requiring something other than membership. The various common forms of union security do require membership and Congress carefully employed a generally understood term.

This Court should adhere to its frequently stated rules of statutory construction (1) that unambiguous language should be interpreted according to its clear meaning without resort to legislative history or public policy which are often themselves ambiguous, (2) that matters not clearly excepted from a statutory right are within such right, and (3) that provisos limiting the grant of rights should be strictly construed. The application of these rules to Section 7 and the first proviso of Section 8(a) (3) strongly suggest that the term "membership" in such proviso means membership within the meaning of the constitution and by-laws of the particular labor organization and that the grant of employee rights contained in Section 7 is limited only by union security arrangements requiring actual membership.

The legislative history of the Taft-Hartley Act, although not without ambiguity, tends to establish that Congress in-

tended "membership" in the first proviso of Section 8(a) (3) to have its common, ordinary meaning. The legislative history of the Wagner Act and cases decided thereunder are not pertinent since the statutory right of employees to refrain from assisting labor organizations contained in Section 7 of the Taft-Hartley Act did not exist at that time. The statements of Senator Taft made in debate upon the first proviso of Section 8(a) (3) support the conclusion that "membership" is used in its normal sense.

Even if Congress intended the proviso to prevent "free riding" by those who are said to secure the benefit of union representation without paying their proportionate share of the cost of such representation, the agency shop agreement proposed by the Union would not be within this Congressional intent because it would require employees who are not union members to pay for benefits which they do not receive. Since Congress was aware of other union security measures than those requiring membership at the time of the debates upon the Taft-Hartley bill, the fact that "membership" is used in the first proviso of Section 8(a) (3) should be interpreted as a judgment by Congress that union security provisions not requiring membership should be unlawful.

The agency shop arrangement proposed by the Union should be judged by itself. It does not obtain validity by being associated in the alternative with valid union security provisions. Moreover, in states such as Indiana in which Right-To-Work Laws have been enacted outlawing union shop contracts, no such association would be possible.

The agency shop suggested by the Union is more onerous, not less onerous than the union shop. It is not a lesser form of union security since it requires nonmembers to pay for benefits which they do not obtain.

The second proviso of Section 8(a) (3) does not constitute a definition of "membership". It limits the exception contained in the first proviso because otherwise a union security arrangement requiring membership would be valid even if membership were not open to all employees. The term "membership" in the first proviso denotes actual membership in accordance with the constitution and by-laws of the particular labor organization and nothing more.

## ARGUMENT.

### SECTIONS 7, 8(a)(1), AND 8(a)(3) OF THE ACT PROHIBIT ALL TYPES OF UNION SECURITY PROVISIONS EXCEPT THOSE REQUIRING UNION MEMBERSHIP.

Section 7 of the National Labor Relations Act, as amended, grants employees "the right to * * * assist labor organizations * * * and to engage in other concerted activities * * * and * * * also the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3)" (61 Stat. 136, 73 Stat. 519).

The statutory right to refrain from assisting labor organizations did not exist prior to the enactment of the Taft-Hartley Act. The primary concern of Congress in enacting this legislation was the protection of the individual rights of employees. *Radio Officers' Union* v. *N. L. R. B.*[2]

Section 7 and Section 8(a) (1) undertake to define and establish the rights of individual employees *vis-a-vis* the rights and duties of labor organizations and employers. These provisions indicate that the rights of individual employees are paramount in the fundamental scheme of the Taft-Hartley Act.

The *amici curiae* recognize, of course, that their right to refrain from assisting a labor organization is limited to the extent specified in the first proviso of Section 8(a) (3). This proviso states, "That nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of em-

2. 347 U. S. 21 (1954).

ployment membership therein on or after the thirtieth day following the beginning of such employment . . . " (61 Stat. 136).

The Union's proposal to the Company is not that the *amici curiae* and all other employees in the bargaining unit be required to obtain membership in the Union as a condition of employment. It is that all such employees be subject to discharge unless they pay a monetary fee to the Union although they are not members of the Union. The right of the *amici curiae* and other employees who are not members of the Union to refrain from assisting such organization cannot be limited by requiring them to pay a fee to such organization.

The right granted in Section 7 to refrain from assisting any labor organization is absolute, except as limited by the first proviso of Section 8(a) (3). The one exception contained in this proviso pertains to union security arrangements requiring membership. "Membership" is not an obscure, technical word. It is not one with a special meaning in the labor-management field. There is no reason not to apply its common, every-day meaning.

The Union recognized the difference between membership and nonmembership in the drafting of the proposed agency shop agreement submitted to the Company. Paragraph (b) of such agreement states: "Membership in the Union is separate, apart and distinct from the assumption by one of his equal obligation to the extent that he receives equal benefit" (R., pp. 54-55). The Union thus admits that the proposed agency shop provision does not require "membership". Since only union security arrangements requiring membership are referred to in the first proviso of Section 8(a) (3) and since only union security arrangements described in the first proviso of Section 8(a) (3) are excepted from the general grant of rights to employees

contained in Section 7 of the Act, the Union's proposed agency shop agreement is in violation of the rights conferred by Section 7, there being no contention that contributing financial support to a labor organization is not "assisting" such labor organization.

**(1) The Statutory Scheme Permitting Only a Membership Requirement Is Reasonable.**

In enacting the 1947 Amendments to the Act, Congress thoroughly studied and considered all Sections of the Act and developed an over-all statutory scheme which permitted certain things and prohibited certain things. This statutory scheme was not the chance result of careless use of words, but rather was the product of deliberate and even painstaking consideration, word for word, of the language to be employed in the statute. The term "membership" used in the first proviso to Section 8(a) (3) and used again in the Section 14(b) provision saving prohibitory state legislation was deliberately employed and clearly understood by all who participated in the legislative process.

Not only was the term "membership" deliberately employed by an informed Congress, but the term was also reasonably employed to mean precisely what it is understood to mean. At the time the 1947 Taft-Hartley Amendments were enacted there were four types of union security clauses commonly appearing in collective bargaining agreements. These types were the following:

(1) *Closed Shop*– The closed shop contract clause requires union "membership" from an applicant for employment before he can be hired (This union security arrangement was made illegal by the 1947 Amendments).

(2) *The Union Shop*—This contract clause requires "membership" of all employees by the end of a stated time limit after initial employment.

(3) *The Modified Union Shop*—This contract clause requires "membership" in the union from all employees belonging to the union on a stated date and all employees thereafter hired, but it exempts present non-member employees from the "membership" requirement of the clause.

(4) *Maintenance of Membership*—This contract clause requires "membership" of those employees who have voluntarily become members of the union as of a stated date, but it exempts other employees from the membership requirement.

The four types of union security arrangements listed above are all of the types of union security arrangements commonly or even frequently appearing in collective bargaining agreements at the time the 1947 Amendments were enacted. These clauses have one outstanding feature in common, *i.e.*, they require "membership" of certain employees. The only variation between the different clauses is in the definition of the group of employees to whom the requirement of "membership" is applicable.

Congress enacted specific legislation which secured certain rights to employees, including the right to refrain from assisting a labor organization and the right to be free from interference, restraint or coercion in regard to that right. Congress provided an exception to the general prohibition by which employers and unions under certain circumstances are permitted to enter into an agreement requiring "membership". This exception appears in the first proviso of Section 8(a) (3); and the term "membership" there employed was deliberately use to be inclusive of the forms of union security commonly appearing in collective bargaining agreements. Congress' use of the term was logical, it was reasonable, and it was inclusive of the various contractual arrangements which require an employee to become a member of a labor organization.

The "agency shop" arrangement was virtually unknown at the time of the 1947 Amendments to the Act. The device of requiring a non-member employee to pay money to a union as a condition of employment has had little or no favor among unions and managements except to the extent that it has been recently employed in an effort to circumvent state laws in states like Indiana which prohibit contract clauses requiring union membership.[3] In light of these facts, it cannot be reasonably said that Congress intended to permit such a contractual device, which the language it employed clearly prohibits, in order that unions and companies may be permitted to infringe upon individual employee rights in a Right-to-Work state.

The fact that Congress intended to prohibit any type of arrangement which it did not permit by the first proviso of Section 8(a)(3) does not need belaboring. Congress considered its wording carefully and it developed a reasonable statutory scheme of regulation. All the various forms of union security requiring "membership" are permitted under appropriate circumstances and all other discrimination in regard to or interference with the right of employees to refrain from assisting a labor organization are prohibited.

### (2) Unambiguous Words of a Statute Should Be Construed According to Their Clear Meaning.

This Court has frequently held that clear and unambiguous statutory language precludes the interpretation of such language based upon legislative history or public policy which are themselves almost always ambiguous.

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3. A survey by the Bureau of National Affairs shows that as few as 1% of collective bargaining agreements contained "agency shop" clauses in 1957 when the Indiana Right-to-Work statute was enacted. 46 L. R. R. M. 14, 18 (1961).

*Local 1976* v. *N. L. R. B.*[4]; *Flora* v. *United States*[5]; *N. L. R. B.* v. *Coca-Cola Bottling Co.*[6]; *Yates* v. *United States*[7]; *Unexcelled Chemical Corp.* v. *United States.*[8]

In *Unexcelled Chemical Corp.* v. *United States, supra,* this Court said:

> "It is not for us then to try to avoid the conclusion that Congress did not mean what it said. Arguments of policy are relevant when for example a statute has an hiatus that must be filled or there are ambignities in the legislative language that must be resolved. But when Congress, though perhaps mistakenly or inadvertently, has used language which plainly brings a subject matter into a statute, its word is final—save for questions of constitutional power which have not even been intimated here." (345 U. S. at 64.)

Section 7 of the Act gives employees the freedom to assist labor organizations or not to assist labor organizations, whichever course they should choose to follow. Section 8(a)(1) and Section 8(a)(3) declare that it is an unfair labor practice for an employer to interfere with such freedom. The one exception to the declaration of rights found in Section 7 and the implementation of such rights contained in Sections 8(a)(1) and 8(a)(3) is that, under certain conditions, an employer may enter into a contract with a union providing that membership in such organization is a condition of employment.

The language which Congress used in limiting the right to refrain from assisting a labor organization is unambiguous. It permits an employer and a union to require membership in the union, under certain circumstances, as a

4. 357 U. S. 93 (1958).
5. 357 U. S. 63 (1958).
6. 350 U. S. 264 (1956).
7. 354 U. S. 298 (1957).
8. 345 U. S. 60 (1953).

condition of employment. The exception is only as broad as the word "membership".

In *N. L. R. B.* v. *Coca-Cola Bottling Co., supra*, this Court was called upon to construe the term "officer" as used in Section 9(h) of the Labor Management Relations Act, as amended. The employer had been charged with violation of Sections 8(a)(1) and 8(a)(3) of the Act. At the hearing before the National Labor Relations Board, the employer challenged the jurisdiction of the Board upon the ground that the Regional Director of the complaining union had not filed a non-communist affidavit which Section 9(h) required of each "officer" of the union. The Board rejected this contention on the ground, among others, that the employer's allegations, if true, did not establish that the Regional Director was an "officer" of the union, the Board proceeding on the theory that a union "officer" was a person occupying a position identified as an office in the union's constitution. The Sixth Circuit Court of Appeals remanded the case to the Board for determination of whether the Regional Director's functions constituted him an "officer", although he was not designated as such in the union's constitution.

In an opinion by Mr. Justice Frankfurter, this Court unanimously held that the Board had properly construed the term "officer" used in Section 9(h), saying:

> "Neither § 9(h) itself nor its legislative history attempts a definition of 'officers.' 'Officers' is a word of familiar usage and '(a)fter all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him.' • • • 'Officers' normally means those who hold defined offices. It does not mean the boys in the back room or other agencies of invisible government, whether in politics or in the trade-union movement.

> A definition of officer as 'any person occupying a position identified as an office in the constitution of the labor organization' accords with this lay understanding." (350 U. S. at 268-269.)

The word "membership" to be defined in this proceeding and the term "officer" construed by this Court in the *Coca-Cola Bottling Co.* case both relate to the internal organization of a labor union. Just as the constitution of a labor organization defines who its officers are, so the same constitution determines what employees are members. Both words have meaning only with respect to a given labor union, and both denote those persons and only those persons whom the laws of such organization designate.

The term "membership" does not have a special or unique meaning in the field of labor relations. A member of a union is a person who has been admitted to its membership according to its constitution and by-laws. No employee would think otherwise; no employer would think otherwise, and it is implausible to think the Congress intended any other meaning.

As stated by Mr. Justice Frankfurter in *Coca-Cola Bottling Co.*, legislation when not expressed in technical terms is directed to the ordinary person. The meaning to be given to its language is that which the common run of man would attribute to it. The first proviso in Section 8(a)(3) is clear and unambiguous and precludes resort to legislative history for interpretation.

indicate that the term "membership" in Section 7 and Section 8(a)(3) was not intended by Congress to authorize any different union security device than compulsory union membership.[12]

Both the Solicitor General and the Union place some emphasis in their briefs upon the legislative history of the Wagner Act and cases decided thereunder. Neither such history nor such cases are in point. The statutory right of employees to refrain from assisting a labor organization came into existence with the enactment of the Taft-Hartley Act. Prior to that time no such statutory right existed. Congressional debate and decisions pertaining to the scope of the first proviso of Section 8(a)(3), as contained in the Wagner Act, are not helpful when the general rule to which the proviso now applies was not then in existence.

The Solicitor General and the Union construe a statement made by Senator Taft on the floor of the Senate as analogizing the provisions of the first and second provisos of Section 8(a)(3) to the form of agency shop which has been adopted in Canada. The Senator's remarks not only do not bear this construction, but instead support the conclusion that agency shop arrangements were excluded by Congress from the first proviso of Section 8(a)(3). Senator Taft concluded the remarks referred to in the Solicitor General's and Union's Briefs by saying:

> "If he pays the dues without joining the union, he has the right to be employed. That, in effect, is a kind of tax, if you please, for union support, if the union is the recognized bargaining agent for all the men, but there is no constitutional way by which we can do that in the United States" 93 Cong. Rec. 5088.

Although stating that the end result of the two provisos of Section 8(a)(3) is similar to the state of affairs in

12. 2 Leg. Hist. (1947), 295, 300, 409; 93 Cong. Rec. 1623, 3612-3620, 3952, 3953, 4152, 4262, 4412, 5137, and 5147.

Canada, the Senator made it clear upon the Record that the provisos of Section 8(a)(3) do not permit an agency shop agreement as did the Canadian statute. To authorize such, the Senator thought, would be unconstitutional. The Senator's statement constitutes a positive declaration that the proviso of Section 8(a)(3) permitting a contractual requirement of membership was intended to permit precisely that and was not intended to permit any requirement of a money payment from a non-member.

The Solicitor General and the Union suggest in their Briefs that the members of Congress were chiefly occupied with the elimination of "free riders" in their debates upon the Taft-Hartley Act. It is argued that the first proviso of Section 8(a)(3) was intended to permit all arrangements eliminating so-called "free riders" except the closed shop. If Congress was preoccupied with any one factor during the debates upon the Taft-Hartley Act, it was the protection of the right of individual employees to assist or refrain from assisting labor organizations in any way. Any consideration of alleged "free riders" was certainly secondary.

Even if the function of the first proviso of Section 8(a)(3) were to require employees, by whatever arrangement labor organizations and employers should decide, to pay their proportionate share of the cost of the representation afforded them by such labor organizations, the agency shop agreement which the Union has proposed to the Company would not qualify for such exception. The provision goes much further than the proviso would permit even when so broadly construed. As the Solicitor General stated in his Brief:

> "Under the agency shop, the non-member pays the full amount of initiation fee and periodic dues. His payments go to defray not only expenses of collective bargaining for which he receives a *quid pro quo*—such as

> the cost of negotiating contracts, handling grievances and taking cases to arbitration—but also to finance welfare benefits and promote unionization, lobbying and political activity. Thus, while an agency shop agreement may leave a non-member free of what he deems a distasteful personal association, he is nevertheless required to finance the promotion of the union's objectives—objectives that do not benefit him directly and that he may regard as obnoxious, if not an infringement of his personal political liberty." Solicitor General's Brief, pp. 37-38.

The effect of the agency shop proposed by the Union is to permit the Union to free ride on the *amici curiae* and other employees similarly situated rather than vice versa.

The Solicitor General states at page 26 of his Brief that, "Congress was aware that there were arrangements less restrictive than the union shop by which unions had apportioned the costs of representation among the employees in the bargaining unit, and in singling out the union shop it had no intention to preclude them." The Solicitor General is correct in his statement that Congress was aware of other forms of union security than the union shop. However the conclusion he draws from this fact ignores the language which Congress employed in expressing its intent. The fact that Congress was cognizant of the agency shop and nevertheless limited the union security arrangements made permissible by the first proviso of Section 8(a)(3) to those requiring "membership" argues strongly for the fact that Congress intended to exclude from this exception all forms of union security not requiring membership.

The legislative history of the Taft-Hartley Act, although not without ambiguity, tends to establish that Congress meant "membership" to have its common, ordinary, everyday meaning, that "membership" should denote the holding of membership in accordance with the constitution and

by-laws of the particular labor organization. Certainly, nothing in the legislative history establishes the contrary position.

**(6) The Provisions of Section 14(b) and of Section 8(a)(3) Are Interrelated.**

Congress used the term "membership" in Section 8(a)(3) and again in Section 14(b) as interrelated parts of an over-all scheme of statutory regulation. Congress was aware that many states had statutes prohibiting various forms of union security appearing in collective bargaining agreements, and Congress wished to leave this state legislation undisturbed and also wished to negate any inference that the proviso to Section 8(a)(3) was to be construed as pre-empting such state legislation or any similar future state enactments. The logic of the situation required the use of the same term "membership" in Section 14(b) as had appeared in the proviso of Section 8(a)(3). Congress intended to permit the states to prohibit those clauses which the proviso of Section 8(a)(3) would permit. Congress had no need to permit the states to prohibit any different arrangements which stood prohibited by the general provisions of the Act, including Sections 7, 8(a)(1), and 8(a)(3).

Congress manifest a clear intent to permit the various contractual arrangements requiring "membership" as a condition of employment as a limitation upon the right of an employee to refrain from assisting a labor organization. Congress also intended that the states should be free to outlaw such arrangements if they saw fit. Certainly, it is unreasonable to imply from these statutory provisions any Congressional intent that contractural clauses requiring something other than membership should be permitted in states which have availed themselves of the Congressional permission to outlaw the membership requirement.

The Congressional intent is set forth clearly in unambiguous language in an overall statutory scheme of regulation which is reasonable, which is consistent, and which clearly delineates the permissible area of individual rights, management rights, union rights and of state regulation. The entire scheme was carefully and logically worked out, and it should be interpreted and applied precisely as Congress stated and precisely as Congress intended it to operate.

**(7) An Agency Shop Agreement Is Not Made Valid by the Fact That It Is Coupled in the Alternative With a Union Shop Provision.**

Both the Solicitor General and the Union suggest that the agency shop agreement proposed by the Union is valid under the first proviso of Section 8(a)(3) because it may be joined as an alternative with a union shop provision which is clearly valid under such proviso. This is an inversion of the guilt by association fallacy. The validity of an agency shop provision is determined by whether it is included in the first proviso of Section 8(a)(3). If it is included in that proviso, it is valid; if it is not, it is invalid. The agency shop must be judged by itself and does not obtain validity by being associated with an admittedly valid form of union security.

Furthermore, the *amici curiae* and all employees of General Motors similarly situated in Indiana and all employees in states in which Right-to-Work laws outlawing union shops have been enacted and interpreted as allowing agency shops do not have the choice upon which the Solicitor General and the Union place so much emphasis. In Indiana the union shop is made illegal by statute.[13] Agency shop provisions therefore cannot be joined in Indiana with union

13. Burns Ind. Stat. Ann. (1962 Cumm. Pocket Supp.), Sec. 40-2701, *et seq.*

shop requirements to obtain the validity by association which the Solicitor General and the Union contend they would otherwise have.

### (8) The Agency Shop Is Not a Lesser Form of Union Security Included in the Term "Membership".

The Solicitor General and the Union also contend that the proposed agency shop arrangement is included as a lesser form of union security in the first proviso of Section 8(a)(3). This contention ignores the language which Congress employed in the proviso and the fact that Congress was aware of various forms of union security provisions but described only those requiring "membership." This argument also does not take into consideration the fact that the right to refrain from assisting labor organizations did not exist prior to the enactment of the Taft-Hartley Act and the fact that the scope of the first proviso of Section 8(a)(3) must be determined in the context of this new right, not the situation existing prior to the creation of such right. Congress's grant of the right to refrain from assisting labor organizations eliminates any argument which could be made under the Wagner Act that so-called lesser types of union security were included in the first proviso of Section 8(a)(3).

The agency shop proposed by the Union is not a lesser form of union security. It requires employees who are not members to contribute to the support of the Union to the same extent as members, but would not permit such employees to have the right to attend union meetings, to vote upon the ratification of collective bargaining agreements negotiated by the union, or to participate in union intra-organizational affairs (R. pp. 86-87, 92). Furthermore, it would require non-members ont only to defray the expenses of collective bargaining, but also to finance organizational

efforts, political activity, and other union objectives which do not benefit them directly and which they may consider repugnant. The proposed agency shop provision would require those employees who do not desire to join the Union to pay the same monies but receive fewer benefits than members of the Union. Rather than being less onerous, the agency shop agreement is more onerous.

The Solicitor General and the Union contend that unless an agency shop contract is within the purview of the first proviso of Section 8(a)(3), employees will be able to obtain the benefits of union representation without paying their proportionate share of the cost of such representation. This contention ignores the fact that the proposed agency shop contract would require the *amici curiae* and other employees similarly situated to pay not only their proportionate share of the expense of collective bargaining but also a share of other activities of the union which benefit only members.

Neither the Solicitor General nor the Union has advanced any valid reason for construing the term "membership" in the first proviso of Section 8(a)(3) as including the agency shop arrangement proposed by the Union, even if such construction were one of several possible under applicable rules of statutory construction.

### (9) The Second Proviso of Section 8(a)(3) Does Not Make the Union Security Provisions Described in the First Proviso Analogous to Agency Shop Arrangements.

The second proviso does not constitute a definition of the term "membership" as used in the first proviso. It is a further limitation upon the permissible action of companies and unions. In placing the second proviso in Section 8(a)(3), Congress recognized that membership in a labor organization is a specific status having a precise

and recognized meaning and that if no further limitation of action were placed upon the parties, they would be free to do as they saw fit in regard to the requirement of membership. Congress chose to place these two limitations upon the freedom of an employer and a labor organization to require membership in the labor organization by contract. Nothing more was intended.

## Conclusion.

For the foregoing reasons the judgment of the court below should be sustained.

Respectfully submitted,

OWEN J. NEIGHBOURS,
1350 Consolidated Building,
Indianapolis 4, Indiana,
*Attorney for Raymond E. Lewis, Bernice Cox, Paul B. Atwood, R. E. Harrington, Cletus E. Chitwood, Eugene Cates, Lewis D. Fields, and John A. Moldthan.*

CHARLES W. CULP,
1350 Consolidated Building,
Indianapolis 4, Indiana,
*Of Counsel.*

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